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SENATE BILL 916

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Shannon Robinson

AN ACT

RELATING TO PUBLIC FINANCES; INCREASING THE AMOUNT OF THE  
ALLOWABLE INVESTMENT OF THE SEVERANCE TAX PERMANENT FUND IN NEW  
MEXICO FILM PRIVATE EQUITY FUNDS OR A NEW MEXICO FILM PROJECT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-27-5.26 NMSA 1978 (being Laws 2000  
(2nd S.S.), Chapter 6, Section 2, as amended) is amended to  
read:

"7-27-5.26. INVESTMENT IN FILMS TO BE PRODUCED IN NEW  
MEXICO. --

A. No more than [~~two and one-half~~] five percent of  
the market value of the severance tax permanent fund may be  
invested in New Mexico film private equity funds or a New  
Mexico film project under this section.

B. If an investment is made under this section, not

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1 more than [~~seven million five hundred thousand dollars~~  
2 ~~(\$7,500,000)] fifteen million dollars (\$15,000,000) of the  
3 amount authorized for investment pursuant to Subsection A of  
4 this section shall be invested in any one New Mexico film  
5 private equity fund or any one New Mexico film project.~~

6 C. The state investment officer shall make  
7 investments pursuant to this section only upon approval of the  
8 state investment council after a review by the private equity  
9 investment advisory committee and the New Mexico film division  
10 of the economic development department. The state investment  
11 officer may make debt or equity investments pursuant to this  
12 section only in New Mexico film projects or New Mexico film  
13 private equity funds that invest only in film projects that:

14 (1) are filmed wholly or substantially in New  
15 Mexico;

16 (2) have shown to the satisfaction of the New  
17 Mexico film division that a distribution contract is in place  
18 with a reputable distribution company;

19 (3) have agreed that, while filming in New  
20 Mexico, a majority of the production crew will be New Mexico  
21 residents;

22 (4) have posted a completion bond that has  
23 been approved by the New Mexico film division; provided that a  
24 completion bond shall not be required if the fund or project is  
25 guaranteed pursuant to Paragraph (5) of this subsection; and

1 (5) have obtained a full, unconditional and  
2 irrevocable guarantee of repayment of the invested amount in  
3 favor of the severance tax permanent fund:

4 (a) from an entity that has a credit  
5 rating of not less than Baa or BBB by a national rating agency;

6 (b) from a substantial subsidiary of an  
7 entity that has a credit rating of not less than Baa or BBB by  
8 a national rating agency;

9 (c) by providing a full, unconditional  
10 and irrevocable letter of credit from a United States  
11 incorporated bank with a credit rating of not less than A by a  
12 national rating agency; or

13 (d) from a substantial and solvent  
14 entity as determined by the state investment council in  
15 accordance with its standards and practices; or

16 (6) if not guaranteed pursuant to Paragraph  
17 (5) of this subsection, have obtained no less than one-third of  
18 the estimated total production costs from other sources as  
19 approved by the state investment officer.

20 D. The state investment officer may purchase at a  
21 discount, from an eligible New Mexico film project, up to  
22 eighty percent of an expected and estimated film production tax  
23 credit available to a film production company pursuant to the  
24 provisions of Section 7-2F-1 NMSA 1978. The New Mexico film  
25 division of the economic development department shall determine

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1 the estimated amount of a film production tax credit. The  
2 state investment council shall establish guidelines for the  
3 state investment officer's initiation of a purchase and the  
4 terms of the purchase.

5 E. As used in this section:

6 (1) "committed capital" means the sum of the  
7 fixed amounts of money that accredited investors have obligated  
8 for investment in a New Mexico film private equity fund, which  
9 fixed amounts may be invested in that fund in one or more  
10 payments over time;

11 (2) "film project" means a single media or  
12 multimedia program, including advertising messages, fixed on  
13 film, videotape, computer disc, laser disc or other similar  
14 delivery medium from which the program can be viewed or  
15 reproduced and that is intended to be exhibited in theaters;  
16 licensed for exhibition by individual television stations,  
17 groups of stations, networks, cable television stations or  
18 other means; or licensed for the home viewing market; and

19 (3) "New Mexico film private equity fund"  
20 means any limited partnership, limited liability company or  
21 corporation organized and operating in the United States that:

22 (a) has as its primary business activity  
23 the investment of funds in return for equity in film projects  
24 produced wholly or partly in New Mexico;

25 (b) holds out the prospects for capital

1 appreciation from such investments; and

2 (c) accepts investments only from  
3 accredited investors as that term is defined in Section 2 of  
4 the federal Securities Act of 1933, as amended, and rules  
5 promulgated pursuant to that section. "

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